

VII.

CONCLUSION

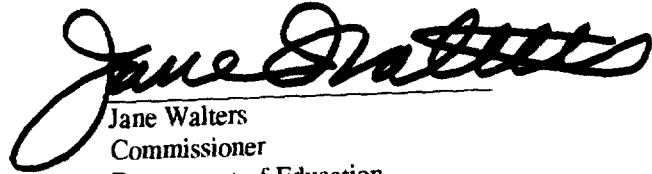
There are four specific eligibility issues properly before the Commission for consideration and these have been addressed at great length in the State's Opposition. The State believes its acquisition of a traditional Internet service qualifies it for funding, as it does for many of the other similar 30,000 Applicants. As the State gave "primary consideration" to pre-discount price in awarding its contract, as required by its procurement rules, it submits that it has complied with the Commission's funding rules. And, the State believes it was eminently reasonable in accepting the use of less expensive "used" network components by ENA, in lieu of "new" network components, which new network components would have clearly been eligible for funding. Thus, it is not disqualified. Finally, it believes it has properly reflected intrastate discounts in its funding request.

There are a number of other matters which have been raised but which are speculative at best and are irrelevant and improper. Specifically, can the Commission overturn and second-guess a State's reasonable service choices; a State's decision to sell its interest in its network; and the State's Application of its well-established procurement and review practices? In brief, should the Commission act as a new appeal forum for the State decisions? We do not believe such actions by the Commission are authorized, or rational, or needed!.

The State is pleased with its choices and what it has been able to accomplish at a very low cost of less than \$17 per student per year. The State and the Tennessee schools have absorbed huge unfunded costs to get to this point and to save USF Fund pools. It would be dismayed if Commission procedures could be utilized by a disgruntled bidder as a podium for unsupported, speculative, blind accusations.

The Commission should dismiss the ISIS 2000 Objection and permit the State Program to move forward without delay. The School year is fast approaching and a lost Teaching year cannot be recovered by our youth!

Respectfully submitted

A handwritten signature in black ink, appearing to read "Jane Walters", written in a cursive style.

Jane Walters
Commissioner
Department of Education
Andrew Johnson Tower, 6th Floor
710 James Robertson Parkway
Nashville, TN 37243

ATTACHMENTS
to
CONSOLIDATED RESPONSE

1. Tennessee Regulatory Authority Interim Order, confirming availability of Special Access Tariffs for Education.
2. Letter dated April 29, 1998, from the Council of State Information Officers, regarding federal and state jurisdictional issues.
3. Tennessee Information Systems Council Minutes of May 26, 1998, approving sale of ConnecTen.
4. Tennessee Code Annotated 12-4-109, describing the State's contract award criteria and appeal procedures.
5. Letter from BellSouth Telecommunications, Inc., dated May 4, 1998, confirming that its earlier cost submissions to ISIS 2000 were not based on a complete record.
6. Copy of the factual submissions to the ISIS 2000 review panels, culminating in a denial of the ISIS 2000 appeals.
7. Copy of State Legislation approving appropriation for schools.
8. Affidavit of J. Shrago.

CERTIFICATE OF SERVICE

I, Christine L. Zepka, hereby certify that copies of the foregoing letter were served on this 21st day of July, 1998, via first class mail, to the following individuals at the address listed below:

William Kennard, Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, D.C. 20554

Commissioner Harold Furchgott-Roth
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, D.C. 20554

Commissioner Susan Ness
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Washington, D.C. 20006


Christine L. Zepka

* By Hand Delivery

Attachment 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 20, 1998

**IN RE: UNIVERSAL SERVICE
PROCEEDING**

DOCKET NO. 97-00888

INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

**H. Lynn Greer, Jr.
Chairman**

**Sara Kyle
Director**

**Melvin J. Malone
Director**

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Exhibit A	Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157.
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Exhibit B	Order Establishing Intrastate Discounts for Schools and Libraries Pursuant to Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157.
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Exhibit C	Order Establishing Procedures for Lifeline Consents Pursuant to Section 214(e) of the Telecommunications Act of 1996 and FCC Order 97-157.
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Exhibit D	Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, as Amended, and FCC Order 97-157.
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ISSUE 11: Support for Schools and Libraries

In addressing support for schools and libraries, the Authority considered the availability of state discounts, and procedures for pre-discount price complaints, as follows:

- 11a. The TRA should state specifically what discounts are available in Tennessee and at what levels.**
- 11b. How does the TRA address pre-discount price complaints?**

Positions of the Parties

The CAD contends that the TRA should consult with the Department of Education and/or the Tennessee Education Association³⁰ to address this question. The CAD comments that since educational discounts are not residential services, they may not be considered part of Universal Service as defined by the statute. In addition, the CAD questions whether the TRA has the power to establish any service beyond what is prescribed by the FCC. Sprint argues that the current educational discounts should be made explicit. NEXTLINK recommends that the implicit subsidies for educational discounts should be eliminated and made explicit. AT&T contends that the current state and Federal discounts are enough and that the TRA has already stated the level of discounts through the adoption of the Federal Discount Matrix. BST argues that the necessary support should be from the state fund in order to ensure portability among carriers. BST also agrees with AT&T's position that the TRA has already stated the level of discounts through the adoption of the Federal Discount Matrix.

³⁰ The record reflects that over 515 notices were sent to Parties or interested persons in this proceeding. One of the responding interested groups was the Tennessee Department of Education. Ms. Amy Bearman and Ms. Jacqueline Shrago of that Department are on the service list for this proceeding.

UNCLASSIFIED AND UNCONTROLLED INFORMATION
EXCLUDED FROM AUTOMATIC DOWNGRADING AND DECLASSIFICATION

Findings

In the interest of ensuring universal and affordable access to telecommunications services for Tennessee schools and libraries, the TRA in its Order in this docket dated September 18, 1997 and captioned *Order Establishing Intrastate Discounts For Schools And Libraries Pursuant To Section 254(h) Of The Telecommunications Act Of 1996 And FCC Order 97-157*, approved Tennessee schools and libraries to receive funding. Today, every school and library in Tennessee, as a result of the Order entered September 18, 1997, can apply for its share of a national universal service funding beginning with the first quarter of 1998. The funding levels are being reexamined at the national level.

The Authority finds that the existing intrastate discounts provided to schools and libraries for School/Parent Communications Service, In-Classroom Computer Access Service, ISDN and Distance Learning Video Transport Service shall be maintained in addition to the federal discounts. On July 15, 1997, the TRA adopted the Federal Discount Matrix which specifically states the federal discount levels available for schools and libraries in Tennessee. These federal discounts are applied to the pre-discount price, which, for the above discussed services, will be no greater than the state tariffed rate, including applicable state discounts. For the most part, discounted rates provided to schools and libraries will be determined by the Federal Matrix. However, the four (4) above-referenced services are already being provided discounts in accordance with state-approved plans. For these services, schools and libraries will have the opportunity to utilize the state discounted rates, and if they qualify, the Federal discount applied to the state discounted rates. Additionally, because it is possible that Federal funding could be depleted by the time some schools and libraries are approved for Federal discounts, and because it is possible that some Tennessee schools may only minimally qualify for Federal support, the continuance of state-established education plans assures schools and

libraries of receiving some level of discounted telephone service.³¹ Companies should immediately make necessary tariffs changes to be consistent with this finding.

The Authority also finds that the existing procedures for addressing pre-discount price complaints shall continue to be used.

³¹ The Telecommunications Act of 1996 requires all Schools and Libraries to participate in a competitive bidding process in order to receive the Federal discount on eligible services. Bids must be submitted to establish a "pre-discount" price to which the discount will be applied. The "pre-discount" price must be the lowest amount charged by providers to other Parties for similar services.

Attachment 2**COUNCIL OF CHIEF STATE SCHOOL OFFICERS**

One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431 • 202/408-8908 • FAX 202/408-8972
<http://www.ccsso.org>

April 29, 1998

Before the
 Federal Communications Commission
 Washington, D.C. 20554
 In the Matter of:

Federal-State Joint Board
 CC Docket No. 96-45
 on Universal Service

William E. Kennard
 Chairman
 Federal Communications Commission
 1919 M Street, NW
 Washington, D.C. 20554

Dear FCC Chairman Kennard:

The Council of Chief State School Officers ("CCSSO"), a nationwide, nonprofit organization that represents public officials who head state-level departments of education, would like to express its opposition to the "Objection to Application and Request for Expedited Declaratory Ruling," filed on April 3, 1998 by Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") ("ISIS 2000 Petition"). In this matter, CCSSO supports the fundamental argument presented in the State of Tennessee's statement of opposition that was submitted to the Federal Communications Commission ("Commission") on April 21, 1998.

Acting by and through its Department of Education, the State of Tennessee submitted an appeal to dismiss the objection and request for a ruling filed by Integrated Systems and Internet Solutions, Inc. In this determination, CCSSO recognizes the Commission must make its decisions in accordance with rules and regulations derived from specific provisions in the Telecommunications Act of 1996, ("Act") as well as on the Order of Consideration (CC Docket No. 96-45). However, the major considerations in the challenge to the State of Tennessee's contract for education telecommunications services appear to question the State's policies and practices, which CCSSO believes are designed to provide equitable services for all of the State's students. The State's decisions for awarding telecommunications service contracts are based on an overriding objective to ensure a reliable and cost-effective telecommunications system and to reap the full benefits of competition.

President WILMER S. CODY, Kentucky Commissioner of Education • President Emer ROBERT E. BARTMAN, Missouri Commissioner of Education • Vice President HENRY R. MAROCKIE, West Virginia Superintendent of Schools • Directors DOUGLAS D. CHRISTENSEN, Nebraska Commissioner of Education • NANCY KENNAN, Missouri Superintendent of Public Instruction • PETER McWALTERS, Rhode Island Commissioner of Education • BARBARA E. NIELSEN, South Carolina Superintendent of Education • NORMA PAULUS, Oregon Superintendent of Public Instruction • MARY L. PETERSON, Nevada Superintendent of Public Instruction • Executive Director GORDON M. AMBACH

FEDERAL COMMUNICATIONS
 COMMISSION
 OFFICE OF SECRETARY

APR 29 1998

RECEIVED

CCSSO is very concerned that any decision by the Commission that challenges a State's integrity and capacity to conduct an open and fair public bidding competition could have serious consequences. The ultimate authority on these issues must remain with the states, and be resolved under the State's procedures. This is what Congress intended. In its obligation to carry out this Congressional mandate, the Commission has rightfully encouraged aggregation, with competitive bidding to maximize the use of the Fund to achieve the mission set out by Congress.

The FCC Rules give the states the right and responsibility to select the best options for their students. The FCC should not entertain challenges to the state's processes or decisions in this regard. Public bidding and awards processes are in the purview of the respective states. State education agencies are committed to support the overall goals for achieving universal service and heavily involved in providing schools and libraries with information, technical assistance and support for the development of comprehensive technology plans to assure that both educational and telecommunications goals will be accomplished.

The Universal Service Fund ("USF") program should help schools, districts, and states maximize their own investments. Furthermore, the lower the costs of one application, the less the cost of the discount. This, in turn, enables the fund to support more applications. Over the past two years, many states, including the State of Tennessee, have attempted to integrate state and local resources and facilities. These efforts are for one purpose: to use a cost effective statewide telecommunications infrastructure to further the common goal of the USF and states of providing the greatest amount of services and bandwidth for the greatest number of schools and libraries in their state. CCSSO, in its leadership role, has urged all states to use all federal resources, including discounted universal service support, as a catalyst in assuring that available state and local resources for telecommunications are used to improve the quality of school and library services.

Implementation of the USF program is complex and involves unanticipated circumstances. The goal of the USF is to provide funds for school services. Where necessary, waivers of the FCC Rules should be entertained to achieve this goal. The FCC should not disallow a USF request simply because it is "novel" if it contributes to the overall goals and priorities incorporated in Section 254(h) of the Act. Thus, absent overriding public interest determinations, funds should be made available. When a state can show that its "used" equipment can actually save both the USF and the State money, it should be given full consideration.

Technology obsolescence is critical issue for states which have made substantial investments for improving public telecommunications services. Thus, emphasis should not be on new hardware but on full services. If existing state networks are sold as the technology changes, the FCC should not preclude new service providers from using this equipment in any way or manner possible. To restrict funding artificially degrades the asset and reduces state money available to support the new service.

Achieving the public policy goals of the USF program will require considerable federal and state cooperation. The program should encourage states to determine the best use of all of the financial assets available for technology -- those from the USF, those from states and those from local education agencies. To do otherwise, will raise serious and appropriate questions in the minds

of the public and destroy the strong Congressional and public support for connecting all of the students in our classrooms to the information of today's world.

With respect to the Universal Service Program, the FCC has authority to rule on matters that relate to basic eligibility standards and requirements. However, the protest prepared on behalf of Integrated Systems and Internet Solutions, Inc. questions the right of the State of Tennessee to establish its own competitive bidding process, and its decision-making process for addressing the educational and informational needs of its students.

An FCC ruling in favor of the protest directed to the State of Tennessee's accepted practices for awarding competitive contracts could have a substantial and negative impact on all states. We urge the FCC to remand the protest to the State of Tennessee to be resolved through its normal procedure for alleged grievances by bidders. All state governments, and in this case, state education agencies, must be encouraged to secure the most cost effective benefits for the schools and libraries they serve. Indeed, recommendations by the Federal-State Joint Board and subsequent Orders by the FCC have encouraged states and local educational agencies to develop consortia and to aggregate the demands and expectations of their constituencies. The FCC should not put itself in a position of forcing states to adopt new processes and procedures, nor dissuading states from building upon their own investments, in planning, designing and implementing cost effective and efficient statewide telecommunications services.

Respectfully Submitted,



Gordon M. Ambach
Executive Director

Attachment 3

INFORMATION SYSTEMS COUNCIL

MINUTES

The Information Systems Council (ISC) met on Tuesday, May 26, 1998, in the Executive Conference Room, Ground Floor of the Capitol.

Members present were:

Commissioner John Ferguson
Commissioner Larry Haynes
Mr. William R. Snodgrass, Comptroller
Senator Douglas Henry, Jr.
Senator Andy Womack
Representative Steve McDaniel
Mr. Charles Ferrell
Mr. H. Lynn Greer, Jr., TN Regulatory Authority
Ms. Martha Wetternann, TSEA (non-voting)
Ms. Joni Kies, ISM Group (non-voting)

Members not present were:

Sen. Ben Atchley
Representative Shelby Rhinehart
Representative Matthew Kister
Mr. Tom Cato
Mr. Pern Guerry

Commissioner John Ferguson opened the meeting.

AGENDA ITEM I - APPROVAL OF JULY 8, 1997 MINUTES

The minutes of the December 12, 1997 meeting were unanimously approved as submitted.

AGENDA ITEM II - STATUS REPORTS

Mr. Bradley S. Dugger, Chief of Information Systems, OIR, gave an overview of the major systems in development.

AGENDA ITEM III - STANDARD FOR MID-LEVEL SYSTEM

Mr. Bradley S. Dugger, Chief of Information Systems, OIR, Department of Finance and Administration reviewed standards approved by the ISC for mainframe and desktop systems. He also reviewed the major applications that had been developed on the mid-level Solaris Unix operating system. He addressed the benefits to the State of having a standard operating system. A motion to adopt the Solaris Unix operating system as the State standard for the mid-level systems was made by Mr. Charles Ferrell and seconded by Rep. Steve McDaniel. The motion was approved unanimously.

AGENDA ITEM IV - ConnectTEN SYSTEM

Mrs. Jane Walters, Commissioner, Department of Education, gave an overview of her vision of connecting Tennessee's students to information through the ConnectTEN project and the use of the Internet. She reported on the accomplishments in meeting this vision for all Tennessee schools.

Mr. Bradley S. Dugger, Chief of Information Systems, OIR, Department of Finance and Administration, reviewed the technical progress of connecting the 7,000 computers and the teacher training approved by the ISC in 1996 to the current implementation of 50,000 computers in 1998 to a projection of 90,000 computers in 2000. The scope expansion offers pornography protection now.

Mr. Dugger reported the State has issued a Request for Proposal (RFP) and awarded a contract to provide the next phase of the ConnectTEN Internet access service. By outsourcing this service, the State will be eligible to apply for the E-rate federal program and will be able to obtain a fully integrated Internet service. Mr. Dugger reported the contractor in their RFP response had proposed to purchase the State's interest in the ConnectTEN project for \$7,500,000.

A motion was made for the State to sell to the contractor the State's interest in the ConnectTEN project for \$7,500,000 by Rep. Steve McDaniel and seconded by Mr. William Snodgrass. The motion passed unanimously.

AGENDA ITEM V - Y2K UPDATE

Mr. Bill Ezell, Director of Systems Development & Support presented the State's status on the Year 2000 project. He reported the State started work on the Year 2000 project in April of 1996 by appointing a project coordinator and started an awareness program with all agencies. Each agency has appointed a coordinator to work with the State's coordinator. Assessments of all State's systems were identified and evaluation of each system has been completed. It was estimated the effort would cost the State approximately \$10,000,000 in State funds. He reported the State goal is to be completed

12-4-109. Contracts for state services. — (a)(1)(A) All personal services, professional services, and consultant services purchased by the agencies and departments of the executive branch of state government must be procured in the manner prescribed by regulations promulgated by the commissioner of finance and administration in consultation with the commissioners of personnel and general services and with the approval of the attorney general and reporter and the comptroller of the treasury. Such regulations shall require:

(i) To the greatest practicable extent, evaluation and consideration of proposers' qualifications and cost in the awarding of the contracts;

(ii) That major categories to be considered in the evaluation of the proposals along with the relative weight of each category shall be included in the final solicitation document; the categories shall include, whenever practicable, qualifications, experience, technical approach, and cost. The evaluation instrument in the solicitation document shall include the breakdown of any points that may be assigned within each major category; any evaluation instructions that may be developed by the procuring agency or department shall also be included in the evaluation instrument. Nothing in this subdivision (a)(1)(A)(ii), however, shall be construed to require the procuring agency or department to develop evaluation instructions or point breakdowns within major categories. Such evaluation instrument shall be included in the final solicitation document or as an addendum to the final solicitation document;

(iii) That proposers be given a reasonable time to consider evaluation factors set forth in the solicitation document before submitting proposals and, further, that no cost proposals may be opened until the evaluation of the non-cost sections of the proposal has been completed; and

(iv) That procedures be implemented for the review, approval, and use of any formulas, models, or criteria that may be included in the solicitation document for the purposes of evaluating cost proposals.

(B)(i) Any actual proposer who claims to be aggrieved in connection with a specific solicitation process authorized under this section may protest to the head of the affected department or agency. The protest shall be submitted in writing within ten (10) days after such claimant knows or should have known of the facts giving rise to the protest.

(ii) The head of the affected department or agency has the authority to resolve the protest. If deemed necessary, the head of the affected department or agency may request a meeting with the protesting party.

(iii) The head of the affected department or agency shall have no longer than sixty (60) days from receipt of a protest to resolve the protest. The final determination of the head of the affected department or agency shall be given in writing and submitted to the protesting party.

(iv) The protesting party may request that the final determination of the head of the affected department or agency be considered at a meeting of a review committee that is composed of the commissioner of general services, the commissioner of finance and administration, the comptroller of the treasury, or their designees, and the head of the affected department or agency. The request for consideration shall be made in writing to the

(b)(1) All personal services, purchased by the agencies and department must be procured directly by the commissioner with the commissioners of counsel of the attorney general. Such regulations shall

and consideration of each of the contracts,

in the evaluation of the category shall be included in the bid shall include, whenever a bid approach, and cost. The bid shall include the breakdown in each major category; any bid by the procuring agency or department instrument. Nothing in this section shall be construed to require the inclusion of instructions or point of inclusion instrument shall be included as an addendum to the final

time to consider evaluation before submitting proposals and until the evaluation of the proposals; and

review, approval, and use of the bid included in the solicitation proposals.

aggrieved in connection with this section may protest to the agency. The protest shall be filed with the claimant knows or the protest.

the agency has the authority to act on behalf of the affected department or agency protesting party.

the agency shall have no longer to resolve the protest. The final determination of the protest shall be made by the department or agency protesting party.

the final determination of the protest shall be made by the commissioner of general services, the comptroller of the treasury, the head of the affected department or agency, or the head of the affected department or agency.

committee within ten (10) days from the date of the final determination by the head of the affected department or agency.

(v) In the event that the head of the affected department or agency fails to respond to a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) days, the protesting party may request that the review committee consider the protest at a meeting.

(vi) Prior to the award of a contract, a proposer who has protested may submit to the head of the affected department or agency a written petition for stay of award. Such stay shall become effective upon receipt by the state. The state shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the review committee makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the state. It shall be the responsibility of the head of the affected department or agency to seek such a determination by the review committee.

(vii) Nothing in this subdivision (a)(1) shall be construed to require a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The protesting party must exhaust all administrative remedies provided in this section prior to the initiation of any judicial review of the protest.

(viii) Should a protest be received by the state subsequent to a contract being completely executed pursuant to a solicitation process authorized under this section, the Tennessee claims commission shall have exclusive jurisdiction to determine all monetary claims against the state including, but not limited to, claims for the negligent deprivation of statutory or constitutional rights.

(C) Nothing in this subdivision (a)(1) shall be construed or have the effect of requiring or increasing the use of or request for proposals (RFP) by any state entity when use of an RFP is not otherwise required.

(2) Administrative contracts for specific service signs pursuant to title 54, chapter 5, part 11 shall be awarded to the vendor who offers the lowest responsible bid. The basis of all bids shall be the least cost to the retail user of the signs. All administrative contracts shall be awarded on an objective, competitive basis pursuant to regulations promulgated by the department.

(b) This section does not apply to construction and engineering contracts entered into by the department of transportation pursuant to the provisions of title 54, chapter 5, or to contracts which are advertised and awarded by the state building commission in accordance with § 4-15-102, and shall not apply to contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies. This section does not apply to contracts to hire additional counsel for the state of Tennessee or any of its departments, institutions or agencies; provided, that all such contracts shall be made in accordance with § 8-6-106, except for legal counsel employed pursuant to any statute concerning the issuance and sale of bonds, notes, or other obligations.

(c) All contracts for the rendering of public relations, advertising or related services entered into by or on behalf of agencies and departments of the

executive branch of state government shall be restricted to provide for only the rendition of media advertising and related design and production services except as otherwise determined in accordance with policies established by the board of standards. [Impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1976, ch. 601, §§ 3, 5; T.C.A., § 12-450; Acts 1980, ch. 741, § 5; 1980, ch. 845, § 1; 1981, ch. 279, § 1; 1983, ch. 115, § 4; 1988, ch. 696, § 5; 1993, ch. 495, §§ 1, 4.]

Compiler's Notes. Acts 1993, ch. 495, § 2 provided that the amendment by that act shall not apply to any solicitation documents, authorized by this section, with an issuance date prior to July 1, 1993.

Acts 1993, ch. 495, § 3 provided that, notwithstanding any other provision of law to the contrary, the commissioner of finance and administration is authorized to promulgate all rules necessary to implement the amendment by that act as public necessity rules pursuant to § 4-5-209.

The review committee, created by this section, terminates June 30, 2003. See §§ 4-29-112, 4-29-224.

Section to Section References. Sections 12-4-109 — 12-4-111 are referred to in § 54-5-1301.

This section is referred to in §§ 12-4-110, 12-7-103, 12-11-103, 39-2-301, 41-24-103, 54-5-1304, 58-7-103, 71-4-608.

12-4-117. [Repealed.]

Compiler's Notes. Former § 12-4-117 (Acts 1991, ch. 282, § 1) concerning members of the

local governing body employed as court reporters, was repealed by Acts 1993, ch. 85, § 1.

PART 2—SURETY BONDS

12-4-201. Contractors bonds — Securities or cash in lieu of bonds. —

(a) No contract shall be let for any public work in this state, by any city, county or state authority, until the contractor shall have first executed a good and solvent bond to the effect that the contractor will pay for all the labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States. The bond to be so given shall be for twenty-five percent (25%) of the contract price on all contracts in excess of one hundred thousand dollars (\$100,000). Where advertisement is made, the condition of the bond shall be stated in the advertisement; provided, that §§ 12-4-201 — 12-4-206 shall not apply to contracts of one hundred thousand dollars (\$100,000) or less.

(b) In lieu of the bond required by subsection (a), the following securities or cash may be substituted at the percentage rate required for such bond:

(1) United States treasury bonds, United States treasury notes and United States treasury bills;

(2) General obligation bonds of the State of Tennessee;

(3) Certificates of deposit or evidence of other deposits irrevocably pledged from a state or national bank having its principal office in Tennessee or a state or federal savings and loan association having its principal office in Tennessee;

(4) A letter of credit from a state or national bank having its principal office in Tennessee. The terms and conditions of any letter of credit shall be subject to the approval of the public official named in the contract. All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter; or

(5) Cash; provided, that pay to the contractor interest invested in a local government bond, § 9-4-704, for the contract price, § 3546a4; mod. Code 1993, § 12-417; Acts 1985, ch. 1, ch. 402, § 13.]

Amendments. The 1997 amendment substituted "one hundred thousand dollars (\$100,000)" for "twenty-five thousand dollars (\$25,000)" in the second sentence substituted "of one hundred thousand dollars (\$100,000) or less" for "under two thousand dollars (\$25,000)" in the last sentence.

ANALYSIS

- 4 Surety bond.
- 9. —Common law obligations.
- 4. Surety Bond.
- 9. —Common Law Obligation Bond provision that the principal

12-4-204. Action on bond

Cited: Koch v. Construction Team, 924 S.W.2d 68 (Tenn. 1996).

12-4-205. Notice of claim

Cited: Koch v. Construction Team, 924 S.W.2d 68 (Tenn. 1996).

12-4-206. Joinder of parties

Cited: Koch v. Construction Team, 924 S.W.2d 68 (Tenn. 1996).

PART 3—REIMBURSEMENT

12-4-320. Pilot program established. — (a) The board for the purpose of establishing a pilot program to be established as defined by § 68-11-201, in those counties having a population of more than 100,000 and

Attachment 5

Shirley A. Ransom
General Attorney

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May 4, 1998

Jacqueline B. Shrago
Project Director, ConnectTEN
Tennessee Department of Education
6th Floor, Andrew Johnson Tower
710 Floor, Andrew Robertson Parkway
Nashville, TN 37243

**Re: Requests for Proposals for Expansion and Network Operation of
ConnectTEN-RFS Number 97-2 ("RFP")**

Dear Ms. Shrago:

This letter is in response to your May 1, 1998 letter to Larry Gill requesting BellSouth confirmation concerning certain matters regarding the aforementioned RFP. BellSouth was selected by both Integrated Systems and Internet Solutions, Inc. ("ISIS") and Education Network Associates ("ENA") to function as a subcontractor in the development of a Proposal to respond to the RFP. BellSouth formed two separate teams to assist ISIS and ENA in the development of their network design. These teams functioned totally independently of each other and were instructed not to share information with each other. As a subcontractor, BellSouth worked at the direction of ISIS in the design and development of the network services and ISIS was the ultimate decision maker concerning the ISIS Proposal. BellSouth, therefore, provides the following responses to the specific questions in your letter.

1. Questions One and Two:

Would you confirm:

1. That your BellSouth ISIS team reviewed all applicable documents before you submitted your proposal on Feb 27 and clarifying response on March 10. (This lists includes the Amended RFP, the State Clarifications, ISIS proposal, ISIS Cost proposal Questions to be answered by ISIS prepared March 7, 1998, and ISIS response of March 10, 1998.
2. As a subcontractor, that you were not familiar with all the representations and requirements that ISIS submitted to in their proposal.)

Response to Question One:

BellSouth assigned a team of individuals to work with ISIS in the design of the network services included in the ISIS proposal (hereinafter the "BellSouth-ISIS Team"). ISIS provided the BellSouth-ISIS Team a copy of the Request for Proposal for Expansion and Network Operation of ConnectTEN - RFS Number: 97-2. ISIS did not provide the BellSouth-ISIS Team the following documents:

- (1) Amended RFP
- (2) The State Clarifications

- (3) ISIS Proposal
- (4) ISIS Cost Proposal
- (5) Questions to be answered by ISIS prepared March 7, 1998, and
- (6) ISIS response of March 10, 1998.

Response to Question Two:

The BellSouth-ISIS Team was not provided a final copy of the ISIS Proposal, however, the BellSouth-ISIS Team did review a draft of the ISIS proposal.

II. Question Three:

The State, in its evaluation has noted that there are significant cost differences between the BellSouth ISIS and BellSouth ENA proposals. In this ISIS proposal for the proposal that use the State Backbone, the BellSouth ISIS costs do not appear to include mileage for all schools, costs for 100% Committed Information Rate (CIR), nor sufficient Private Virtual Circuits to support the RFP requirement of multiple protocols among schools, and allow information to flow directly between schools and their administrative headquarters office.

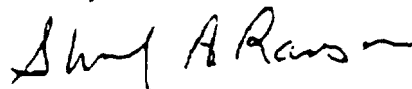
3. We have estimated that the (SIC) cost could be easily an additional \$20 million over 3.5 years. Is this reasonable?

Response to Question Three:

The question "Is this reasonable?" is somewhat ambiguous. ISIS may be able to provide a more fully responsive answer. BellSouth pricing will be based on ISIS final design implementation.

If you have any further questions on this matter, please do not hesitate to call.

Sincerely,



Shirley A. Ransom